



**State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-2900 FAX (603) 271-2456



Frank Whiting d/b/a  
Whiting Rubbish Removal  
1987 North Littleton Road  
Littleton, NH 03651

Louisa Whiting  
1987 North Littleton Road  
Littleton, NH 03651

**ADMINISTRATIVE ORDER  
No. WMD 03-31**

December 24, 2003

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Whiting Rubbish Removal pursuant to RSA 149-M:15, I. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Frank Whiting is an individual doing business as Whiting Rubbish Removal and having a mailing address of 1987 North Littleton Road, Littleton, NH 03651.
3. Louisa Whiting is an individual having a mailing address of 1987 North Littleton Road, Littleton, NH 03651.

**C. STATEMENTS OF FACTS AND LAW**

1. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
2. Frank Whiting and Louisa Whiting are the owners of land at 1987 North Littleton Road, Littleton, NH, more particularly described in a deed recorded in the Grafton County Registry of Deeds at Book 997, Page 423, and identified on Littleton Tax Map 9 as Lot 20 ("the Site").
3. On October 9, 2003, DES received a complaint alleging that used oil, gasoline, and antifreeze were being mismanaged at the Site. The complaint also alleged improper management of solid waste at the Site.

4. On November 3, 2003, DES personnel investigated the complaint by conducting an Inspection of the Site ("Inspection"). The purpose of the Inspection was to determine the Whitings' compliance status relative to RSA 149-M and the Solid Waste Rules.

5. During the Inspection, DES personnel observed or learned the following:

- a. Mr. Whiting brings solid waste to the Site and does truck to truck transfers of solid waste.
- b. Customers bring solid waste to the Site and place it in containers at the Site.
- c. Mr. Whiting transports and brings scrap metal to the Site and then sorts the metal (a processing activity).
- d. To the west of the garage located on the Site, there are several roll-off containers which contain scrap metal.
- e. The Site possesses a pile of mattresses. Mr. Whiting informed DES personnel that he takes the mattresses apart for the scrap metal (a processing activity).
- f. The Site has large accumulations of copper pipe, white goods; specifically washers, dish washers, stoves, refrigerators, dryers, and electric water tanks, cardboard, aluminum cans, glass and plastic bottles, lawn chairs, lawn mowers, tire rims, auto parts, fans, bicycles, storm windows, metal sinks, empty 55-gallon drums, empty 275-gallon tanks, furniture, air conditioners, computers, propane tanks.
- g. The Site has several large piles of scrap tires.
- h. A roll-off filled with bailed cardboard is located at the Site.
- i. A burn pile at the Site includes plywood, painted wood, bags of debris, poly containers of vegetable cooking oil, plastic, linoleum, fiberglass insulations, other burned and charred material, and metal.

6. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."

7. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."

8. Env-Wm 102.42 defines "construction and demolition debris" in part, as "non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not

include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks.”

9. The copper pipe, white goods, cardboard, aluminum cans, glass and plastic bottles, lawn chairs, lawn mowers, tire rims, auto parts, fans, bicycles, storm windows, metal sinks, empty 55-gallon drums, empty 275-gallon tanks, furniture, air conditioners, computers, propane tanks observed by DES personnel at the Site are solid waste as defined by RSA 149-M:4, XXII.

10. RSA 149-M:4, IX defines a “[solid waste] facility” as “a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste.”

11. The Site constitutes a “solid waste facility” as defined by RSA 149-M:4, IX.

12. Env-Wm 102.116 defines “owner” as “a person who owns a facility or part of a [solid waste] facility.”

13. The Whitings are the owners of a solid waste facility.

14. RSA 149-M:9, I states that “No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES].”

15. A review of DES files shows the Whitings have not applied for or hold a permit to operate a solid waste facility at any New Hampshire location.

16. RSA 149-M:9, II states that “It shall be unlawful to transport solid waste to, or to dispose of solid waste at, any facility other than an approved facility.”

17. Solid waste has been transported to the Site. This Site is not approved to accept solid waste.

18. Env-Wm 2605.02(b) requires tires that are stored outdoors to be stored in one of the following manners:

- a. In covered trailers;
- b. In transfer containers; or
- c. In stockpiles as follows:
  - (1) The diameter of the piles shall not exceed 25 feet;
  - (2) The height of the piles shall not exceed 15 feet;
  - (3) Fire lanes no less than 25 feet in width shall be maintained around each pile;
  - (4) Each pile shall have a berm with a minimum height of 12 inches constructed around its perimeter capable of containing any pyrolytic oils or other liquids generated by fire; and
  - (5) The stockpiling facility shall have equipment, cover material and other supplies, including water, sufficient to control a fire until the nearest fire company capable of extinguishing the fire arrives.

19. The tires observed during the Inspection at the Site were not stored in accordance with Env-Wm 2605.02(b).
20. Env-Wm 2702.02(e) specifies that facilities and practices shall not cause air pollution in violation of federal or state law, any air quality rules implemented by DES, the conditions of any air quality permit issued by DES, or the New Hampshire State Implementation Plan under the Clean Air Act.
21. Env-A 1001.05(d) adopted by the Commissioner of DES, states that on-site burning by the landowner of brush, leaves, or untreated wood from the construction or demolition of a building, provided that the material originates on-site, shall be permissible without authorization from the department.
22. Solid waste was burned at the Site.
23. As a result of the Inspection, DES personnel issued a Report of Initial Complaint Investigation ("RICI") to Mr. Whiting advising him to remove all solid waste to a permitted solid waste facility; cease transporting solid waste to the Site, to cease operating an unpermitted solid waste facility, and to contact the Solid Waste Compliance Bureau to obtain a solid waste permit application.
24. DES has previously received complaints against the Whitings alleging improper management of solid waste at the Site (April 7, 1988 and February 1, 1994, and April 14, 1994).
25. On July 8, 1994, DES issued Administrative Order No. WMD 94-07 to the Whitings for violations of RSA 149-M, RSA 147-A, the Solid Waste Rules, and the New Hampshire Hazardous Waste Rules.
26. On January 9, 1995, DES issued a Release of Recordation and Notice of Compliance for Administrative Order No. WMD 94-07 to the Whitings.
27. On August 31, 1994, DES issued Notice of Proposed Fine and Hearing No. WMD AF 94-10 ("NPAF") to the Whitings.
28. On November 1, 1994, the Whitings signed a Motion to Accept Settlement Agreement ("MASA") for the NPAF. Mr. and Mrs. Whiting agreed to the following:
  - a. To provide \$500 worth of solid waste hauling and disposal services to the Town of Littleton or to DES, Waste Management Division within three years from the date of the MASA.
  - b. At the end of the three year period, any unused portion of the \$500 worth of services shall be paid to the Treasurer, State of New Hampshire.
29. On December 22, 1997, DES received the \$500 payment for the unused portion of services.

#### D. DETERMINATION OF VIOLATIONS

1. The Whitings have violated RSA 149-M:9, by operating an unpermitted solid waste facility.
2. The Whitings have violated RSA 149-M:9, II by transporting solid waste to an unpermitted solid waste facility.
3. The Whitings have violated Env-Wm 2605.02(b) by failing to comply with tire storage standards.
4. The Whitings have violated Env-Wm 2702.02(e) by burning solid waste other than as allowed by Env-A 1000.

#### E. ORDER

Based on the above findings, DES hereby orders the Whitings as follows:

1. **Immediately** cease operating an unpermitted solid waste facility, including accepting, storing, sorting, processing, burning an/or transferring solid waste.
2. **Immediately** cease transporting solid waste to an unpermitted solid waste facility.
3. **Within 14 days** the date of this Order, initiate the removal of solid waste currently at the Site to facilities permitted to accept such waste. **Complete the removal of all solid waste from the Site within 180 days the date of this Order.**
4. **Within 15 days** the date of this Order, store tires in accordance with Env-Wm 2605.02(b) of the New Hampshire Solid Waste Rules, until such time as the tires can be removed to a permitted solid waste facility.
5. Submit written status reports to DES **by the 15<sup>th</sup> of each month until the solid waste has been removed**, certifying that corrective measures have been implemented. The final report shall certify that compliance has been achieved. Include in the reports supporting documentation describing those measures taken to achieve compliance, copies of any written plans or proceedings developed, and **copies of disposal receipts.**
6. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Michael Galuszka  
NHDES  
80 Glen Road  
Gorham, NH 03581  
Telephone: (603) 466-5389  
e-mail: mgaluszka@des.state.nh.us

## F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve the Whittings of the obligation to comply with the Order.

## G. OTHER PROVISIONS

Please note that RSA 149-M provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. The Whittings remain obligated to comply with all applicable requirements, in particular RSA 149-M. DES will continue to monitor the Whittings' compliance with applicable requirements and will take appropriate action if additional violations are discovered.

By copy of this Order, this matter is being referred to the New Hampshire Department of Environmental Services, Air Resources Division, for investigation of possible violations of RSA 125-C.

This Order is being recorded in the Grafton County Registry of Deeds so as to run with the land.



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Anthony P. Giunta, P.G., Director  
Waste Management Division



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Michael P. Nolin, Commissioner  
Department of Environmental Services

Certified Mail/RRR: 7000 1670 0000 0584 3632

cc: DB/FILE  
Gretchen Rule, DES Legal Unit  
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Pam Monroe, ARD, DES  
Jennifer Patterson, Sr. Assistant Attorney General  
Town Clerk, Littleton, NH